



# NORTHERN NEWS



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Northern  
*Making Great Communities Happen*

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## Jerry Brown to Pleasanton: Housing and climate change are connected

*By Eric Chase*

Land use is famously about local controversies, and land use decisions are grounded in such microscopic detail that it would be impractical for the state or federal government, both presumably inexpert in those details, to intervene. A local government thus enjoys relatively complete autonomy over how land within its domain is used, subject to limited state and federal requirements.

One major exception to that general rule is housing. The State of California requires that General Plans contain a set of elements, which collectively lay out a blueprint and policy direction to guide future development. Among those elements, the Housing Element is singled out as special, in that it must be updated every five years in accordance with the Regional Housing Needs Allocation (RHNA). The California Department of Housing and Community Development (HCD) and the Association of Bay Area Governments (ABAG) project the number of housing units that the nine-county San Francisco Bay Area will strive to accommodate in the near future, at a range of income levels. A housing share is assigned to local governments to ensure that the whole region meets the required total. Then, as has occurred this year, local governments update their housing elements to clarify how they will accommodate their shares.

This process ensures that local governments plan to accommodate housing that is accessible to a range of income levels. Without such a process, imagine what could happen. Many cities—whose elected officials could be tempted to cater to the parochial demands of anti-growth citizen groups—would shirk their obligations to ensure the production of housing, particularly affordable units. They might, for instance, amend the zoning code to add requirements that are a proxy for wealth, ensuring that only affluent citizens can afford to live there. Other cities might freeze growth altogether, concentrating on their own city limits and ignoring any outside effects. Without a mandate prohibiting such behavior, it would be difficult or impossible for California to justly and equitably accommodate a population that is projected to increase to 60 million by 2050. The State has an enormous interest in ensuring that all of its citizens, of all income levels, are safely housed; but accomplishing this goal requires the cooperation of local governments, which are empowered to control land use.

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## Housing and climate change are connected

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So what happens when a city tries to shrug off its obligation to absorb its fair share of housing? The State must step in, as occurred this summer when Attorney General Jerry Brown acted on the City of Pleasanton's housing cap. In 1996, Pleasanton adopted Measure GG, which instituted a housing cap: no more than 29,000 units could be built within the city. The City has faced litigation concerning this provision since 2006. In January 2009, the Attorney General commented on the Draft Environmental Impact Report (DEIR) of Pleasanton's General Plan update, indicating that the housing cap was problematic. In June, the Attorney General joined the litigation, and by August, Judge Frank Roesch of Alameda County Superior Court rejected the City's motion to dismiss, thereby allowing the case to move forward.

The Attorney General clarified how Pleasanton's cap could violate State housing law, and it basically comes down to the numbers. The RHNA requires that the City accommodate 3,277 housing units by 2014. But as of June 2009, the City is only 2,007 units short of reaching the 29,000-unit cap. With the cap in place, 1,270 of the mandated 3,277 units could not be built—to say nothing of the units that ABAG projections would call for after 2014. And the City still has to make up for housing units that weren't produced during the last RHNA planning period, which ended in 2007.

The housing cap does not permit any exceptions—for instance, to allow the City to zone for the 1,270 additional units needed to comply with the current RHNA. By not allowing such an exception, Pleasanton's housing cap conflicts with the State requirement. The housing cap could be struck down on that basis, but there is yet another reason to overturn it. In order for a general plan to be valid, it must be internally consistent. Pleasanton's General Plan, however, has a fatal inconsistency. The 29,000-unit housing cap is contained in the Land Use Element. The Housing Element admits that the housing cap is an obstacle to meeting the City's housing allocation, while simultaneously encouraging the production of moderate, low, and very-low income housing to meet Pleasanton's needs. That will be difficult to do, so long as the City enforces the 29,000-unit housing cap—particularly since the city is now about 2,000 units shy of maxing out. Thus the housing cap creates an internal inconsistency that would seem to render the General Plan invalid. Removing the housing cap would remove the inconsistency and the conflict with state law.

What continues to be interesting is Jerry Brown's consistent emphasis on the relationship between housing, transportation, and climate change. In this case, Brown claimed that Pleasanton's General Plan violates state housing requirements, and the housing cap could be invalidated on that basis alone. Indeed, in his formal challenge of the housing cap, Brown focuses on the Planning and Zoning Law to make the case, rather than environmental law. Elsewhere, though, Brown has embraced a policy that goes beyond simply pointing out this plain legal problem. In his January 2009 comments on the General Plan DEIR, the attorney general criticized the City for not adequately considering the climate change impacts of the Plan, taking issue with the City's claim that a 46 percent increase in vehicle miles traveled was an insignificant impact.

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- Provide an arena for communication and exchange of information about planning related activities;
- Raise member awareness and involvement in APA affairs;
- Increase public awareness of the importance of planning;
- Encourage professionalism in the conduct of its members; and
- Foster a sense of community among the members.

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## Housing and climate change are connected

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This is an environmental issue distinct from the housing cap. More recently, Brown explicitly tied the housing cap to its effect on travel patterns and air quality, adding his voice to those who claim smart growth and focused land use patterns are critical to reducing greenhouse gas emissions.

Here, then, is a classic example of what was observed in the beginning: a city, unless subject to an overarching state mandate, will often prioritize local parochial interests above the greater good. Pleasanton instituted a housing cap based on its perceived effect within the city limits without accounting for its effects on the greater region. Within a single decade, the number of jobs in Pleasanton almost doubled, reaching about 58,110 employees in 2005; that number has since grown to 61,100 jobs. But while Pleasanton cleared space for this job growth, it did not make space for housing growth. As a result, as ABAG found in 2005, 79 percent of Pleasanton's workforce lived outside the city limits, and half the employees endured long commutes from outside the Tri-Valley area.

The City planned to continue allowing more office and commercial development, projecting 105,000 jobs by 2025. But all the while, the housing cap would be maintained, essentially freezing the population at about 78,000. By not providing sufficient housing to allow people who work in Pleasanton to also live there, the city is essentially forcing long, single-occupancy vehicle commutes, thus increasing emissions, adding cars to extremely congested stretches of freeway, and pushing the region further into nonattainment. The housing cap would also prevent Pleasanton from developing vacant land near its Bay Area Rapid Transit (BART) station. Restricting growth near BART would diminish the value of this infrastructure, precluding growth in the one place in Pleasanton where it makes the most sense. Thus the housing cap, a purely local requirement, produces regionally detrimental externalities.

Brown's challenge—although grounded in housing law rather than environmental principles—may nonetheless be seen as the latest in a string of opinions that reflect his stance on the climate change crisis. Assembly Bill 32 requires that emissions in California be reduced to 1990 levels by 2020; but in the absence of regulations from the Air Resources Board to translate AB 32's broad requirements into more focused action, cities and counties have been uncertain of their obligations. Despite (or perhaps because of) that uncertainty, Brown has commented on general plans throughout California, clarifying that local and regional governments may not simply ignore the adverse impacts their long-range actions could have on air quality. The interplay between housing, transportation, and climate change—fundamental to Senate Bill 375—is also central to the policy reason underlying Brown's decision to litigate the Pleasanton housing cap. It's refreshing to see that someone gets it!

*Eric Chase is a third-year law student at the University of California, Hastings College of the Law, and hopes to pursue environmental law after graduation. He writes about transportation, land use, and water resources at the Transbay Blog (<http://transbayblog.com>).* ■